

Number of children

C. H. G. D.C.

No. 07C-227

Plaintiff, State of Tennessee, acting by and through Attorney General Robert E. Cooper and at the request of Mary Clement, the Director of the Tennessee Division of Consumer Affairs has brought this action pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq*, having filed a complaint against the Defendant, Bayer Corporation. ("Bayer") and the parties having consented to the entry of this Agreed Final Judgment ("hereinafter referred to as "Consent") for the purposes of settlement only, without this Consent constituting evidence against or any admission by any party, and without trial of any issue of fact or law, NOW THEREFORE, upon the consent of the parties hereto IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

PREAMBLE

This Consent is entered into between the Attorneys General or other entities¹ of the States and Commonwealths of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin (hereinafter referred to as "Signatory Attorneys General"), acting on behalf of their respective states, and pursuant to their respective consumer protection statutes; and Bayer Corporation (hereinafter referred to as "Bayer").

I. DEFINITIONS

The following definitions shall be used in construing this Consent:

A. "Adverse Events" shall mean an adverse event associated with the use of a drug in humans. "Serious Adverse Events" are those that, at any dose, are fatal, life-threatening, disabling or incapacitating; result in hospitalization; prolong a hospital stay; or are associated with congenital abnormality. In addition, any event not meeting the above criteria may still be

¹ For the purposes of this agreement, when the entire group is referred to as "Signatory Attorneys General," such designation, as it pertains to Connecticut, shall refer to the Commissioner of the Department of Consumer Protection, who enters this Consent pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110j, acting by and through his counsel, Richard Blumenthal, Attorney General for the State of Connecticut. For Montana, such designation shall refer to the Commissioner of the Department of Consumer Protection who enters this Consent pursuant to the Montana Unfair Trade and Consumer Protection Act, MCA 30-14-101 *et al.*, acting by and through his counsel, Mike McGrath, Attorney General for the State of Montana. For Tennessee, such designation shall refer to Tennessee Attorney General Robert E. Cooper, Jr., and the Director of the Division of Consumer Affairs who enter into this settlement pursuant to the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*

deemed Serious if such an event jeopardizes the patient and may require medical or surgical intervention to prevent one of the outcomes listed above.

B. "Baycol®" shall mean cerivastatin sodium.

C. "Bayer" shall mean the Bayer Corporation and its U.S.-based affiliates, subsidiaries, predecessors, successors, and assigns.

D. "Bayer Website" shall mean Bayer's main Internet site, currently <http://www.pharma.bayer.com> or a link from that site.

E. "Bayer-Sponsored" shall mean Bayer is responsible for regulatory approvals, site selection, protocol development, initiation, monitoring, safety reporting, and Data analysis, even if some or all of these activities are transferred to another party (e.g. Clinical Research Organization). A Clinical Study is not "Bayer-Sponsored" if it is initiated by a third party for which Bayer provides some support, for example by way of a grant or supply of medication, but with sponsor responsibilities for study initiation and management agreed in writing to reside with the third party. For purposes of this Consent only, studies conducted by Bayer's parent entity and its foreign affiliates shall be considered Bayer-Sponsored.

F. "Clinical Study" shall mean any research project that prospectively assigns human subjects to intervention and concurrent comparison/control groups to study the cause-and-effect relationship between a medical intervention and a health outcome. The term "Clinical Study" is not limited to a research study that is randomized or blinded; and is not limited to studies conducted in the United States.

G. "Clinical Study Report" shall mean a description of the Protocol, a summary of all the Data, a description and the results of statistical analyses of the Data, a listing of the common

P. "Parties" shall mean Bayer and the Individual States.

Q. "Post" information shall mean to provide access to the information on an Internet site that provides no-cost and unrestricted access to both the site and the information Bayer has provided through the site. The Posting obligations exclusively reside with Bayer as defined in paragraph C, not Bayer's parent entity or its foreign affiliates. Bayer does not fulfill a requirement to Post information under this Consent if it does so on an Internet site, other than the Bayer Website, that contains any advertisement by any pharmaceutical company or for any pharmaceutical product.

R. "Products" shall mean any pharmaceutical or biological product manufactured, distributed, sold, marketed or promoted in any way by Bayer, solely or in conjunction with other companies in the United States.

S. "Protocol" shall mean the investigational plan that is used to conduct the Clinical Study. The Protocol for an acute phase of a Clinical Study is separate from the Protocol of a continuation or extension phase of a Clinical Study.

T. "Signatory Attorney General" shall mean the Attorney General, or his or her designee, of each state in the Multistate Working Group investigating Bayer's promotion and marketing practices regarding Baycol.®

U. "State Consumer Protection Laws" shall mean the consumer protection laws under which the Signatory Attorneys General have conducted their investigation.²

²ARIZONA Consumer Fraud Act, Ariz. Rev. Stat. § 44-1521, *et. seq.*; ARKANSAS - Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.*; CALIFORNIA Business and Professions Code § 17200 *et seq.*; CONNECTICUT - Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110 *et seq.*; DELAWARE - Consumer Fraud Act, 6 Del.C. Section 2511, *et*

V. "Subject Matter of this Consent" shall mean the Signatory Attorneys' General investigation under the State Consumer Protection Laws of Bayer's promotional and marketing practices regarding the prescription drug Baycol®.

W. "Study Completion Date" shall mean the date on which the last observation is made either of the last patient who remains enrolled in the Clinical Study or following a decision to terminate the Clinical Study early, whichever happens first.

II. BACKGROUND

1. Bayer is in the business of, among other things, researching, developing, manufacturing, distributing, selling, and promoting drugs for use in treating various illnesses and diseases.

seq., UDTPA, 6 Del.C. Section 2531, *et seq.*; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; IDAHO - Consumer Protection Act, Idaho Code § 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* (2002); IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; KANSAS - Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; KENTUCKY - Consumer Protection Statute, KRS 367.170; MAINE - Unfair Trade Practices Act, 5 M.R.S.A. section 205-A *et seq.*; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; MASSACHUSETTS - Consumer Protection Act, M.G.L. c. 93A *et seq.*; MICHIGAN - Consumer Protection Act, Mich. Comp. Laws §445.901 *et seq.* (2004); MISSISSIPPI - Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et seq.*; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEVADA - Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 *et seq.*; NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq.*; OHIO - Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; OREGON - Unlawful Trade Practices Act, ORS 646.605 to 646.656; PENNSYLVANIA - Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; SOUTH CAROLINA - Unfair Trade Practices Act, Sections 39-5-10 *et seq.*; SOUTH DAKOTA - Deceptive Trade Practices and Consumer Protection Law, SDCL Chapter 37-24; TENNESSEE - Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, (1977); TEXAS - Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. And Com. Code § 17.41 *et seq.*, (Vernon 2002); VERMONT - Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; VIRGINIA - Virginia Consumer Protection Act, 59.1 -196 *et seq.*; WASHINGTON- Washington Consumer Protection Act- R.C.W. 19.86 *et seq.*; WISCONSIN - Wis. Stat. § 100.18 (Fraudulent Representations).

2. Baycol®, a prescription drug, was approved initially by the FDA in 1997 as safe and effective as an adjunct to diet for the reduction of elevated total and LDL cholesterol levels in patients with primary cholesterolemia and mixed dyslipidemia (Fredrickson Types IIa and IIb) when the response to dietary restriction of saturated fat and cholesterol and other non-pharmacological measures alone was not adequate. Bayer voluntarily withdrew Baycol® from the market in August 2001.

3. The States have concerns that Bayer failed to adequately warn prescribers and consumers of potential adverse side effects of Baycol®, and, in particular, that such failure violated the States' Consumer Protection Laws.

4. Bayer denies that it failed to adequately warn prescribers and consumers of potential adverse side effects of Baycol® and denies that it violated any of the States' Consumer Protection Laws.

5. Bayer enters into this Consent for the purpose of resolving the Signatory Attorneys' General investigation into Bayer's promotional and marketing practices regarding Baycol®, arriving at a complete and total settlement and resolution of any disagreement as to the matters addressed in this Consent to avoid unnecessary expense, inconvenience, and uncertainty, without admitting any violation of law and without admitting any wrongdoing, and for settlement purposes only.

III. COMPLIANCE PROVISIONS

Pursuant to Tenn. Code Ann. § 47-18-108)(a)(4), Bayer is hereby ORDERED, ADJUDGED and DECREED without a cost bond as follows:

6. Bayer shall comply with all applicable laws and regulations relating to the

marketing, sale and promotion of its Products. Bayer shall not make any false, misleading or deceptive representation regarding any of its Products in violation of all applicable laws and regulations.

7. Any terms that are not defined above in Section I shall be interpreted to have the same meaning as they have in the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) Guidelines for Industry: Structure and Content of Clinical Study Reports (July 1996), which is annexed as Exhibit I.

8. Bayer shall register all Non-Exploratory Phase II, and all Phase III and IV Bayer-Sponsored Clinical Studies on ClinicalTrials.gov in accordance with the following requirements:

- a. Bayer shall register Non-Exploratory Phase II, and all Phase III and IV Bayer-Sponsored Clinical Studies on ClinicalTrials.gov at the time such studies are initiated.
- b. At the time of registration of a Non-Exploratory Phase II Bayer-Sponsored Clinical Study, Bayer will post 15 of the 20 data set items established by the World Health Organization ("WHO"), attached as Exhibit 2, to ClinicalTrials.gov (that is, all data set items except 10, 13, 17, 19 and 20) and, if there is a change in status, update data set 18 in a timely manner. Bayer will populate the remaining five WHO data fields either when the Product reaches Phase III (and a Phase III Bayer-Sponsored Clinical Study is initiated), or when the Summary of the Clinical Study Report is Posted, whichever occurs first. In the event that a Non-Exploratory Phase II

Bayer-Sponsored Clinical Study of a Bayer Product that is approved for marketing and is commercially available in the United States is terminated prior to one or more of its endpoints, Bayer will populate the remaining five WHO data fields no later than 30 days following termination of the study.

- c. At the time of registration of a Phase III or IV Bayer-Sponsored Clinical Study, Bayer will post all 20 data set items to ClinicalTrials.gov.

9. Bayer shall Post on ClinicalStudyResults.org Summaries of Clinical Study Reports ("Summaries of Clinical Study Reports") for all Phase II, III and IV Bayer-Sponsored Clinical Studies of Bayer Products that are approved for marketing and are commercially available in the United States. Should a publicly funded website for such postings become available after the Date of this Consent, Bayer shall also Post on that website as well. Such summaries shall conform to ICH E3 principles and to the template published in the Federal Register, Vol. 61, July 17, 1996, Page 37320 *et seq.*

10. For studies initiated after the date of this Consent, Bayer will also make all reasonable efforts to encourage the publication of, or in the alternative, secure the right to Post, Summaries of Clinical Study Reports in which Bayer had significant participation but did not sponsor.

11. The Summaries of Clinical Study Reports that Bayer Posts shall accurately reflect the methodology used to conduct the Clinical Study and summaries of the Data obtained during the Clinical Study. The Summaries of Clinical Study Reports that Bayer Posts shall include not only the generic and brand names of the Bayer Products, but also a listing of all aliases under

which the Bayer Products may be known at the time of Posting, including the serial numbers, code names and chemical descriptions.

12. Bayer shall Post the Summaries of Clinical Study Reports in accordance with the following time requirements:

- a. With respect to Products approved for marketing and commercially available in the United States for any indication prior to the Date of this Consent
 - (i) Studies completed prior to the Date of this Consent: Summaries of Phase II, III and IV Clinical Study Reports and summaries of any other studies material to a physician's judgment in relation to prescribing Products in the United States, with a Study Completion Date that occurred between July 1, 2005, and the Date of this Consent will be posted within 120 days of the Effective Date of this Consent or within twelve months of the Study Completion Date, whichever is later.
 - (ii) Studies completed after the Date of Consent: Summaries of Clinical Study Reports for Phase II, III and IV Clinical Studies and summaries of any other studies material to a physician's judgment in relation to prescribing Products in the United States, completed after the Date of this Consent will be Posted within twelve months of the Study Completion Date
- b. With respect to Products approved for marketing and commercially

available in the United States for an initial indication after the Date of this Consent, Summaries of Clinical Study Reports and summaries of any other studies material to a physician's judgment in relation to prescribing Products in the United States will be posted within twelve months of the Study Completion Date or first marketing, whichever is later.

- c. The parties recognize that, in some instances, there may be a delay in Posting complete Summaries of Clinical Study Reports because Bayer must seek intellectual property protection or comply with policies of Peer Reviewed Journals to which manuscripts have been submitted for publication; and, further, that Bayer may be required to withhold certain Summaries of Clinical Study Reports to comply with confidentiality provisions in agreements with other parties.
- d. In regard to confidentiality agreements, in all future Clinical Studies Bayer will use reasonable efforts to exclude provisions limiting the publication of Summaries of Clinical Study Reports. For all past Clinical Studies with such confidentiality agreements, Bayer will make reasonable efforts to secure the right to Post the Summaries of Clinical Study Reports.
- e. The Signatory Attorneys General and Bayer do not intend Bayer's determination of materiality for posting to be admissible in private litigation or to constitute an admission by Bayer that the information posted is in fact material to prescribing decisions.

- 13. Bayer shall clearly and conspicuously state on the Home Page of the Bayer

Website that the Posted information is available at ClinicalTrials.gov and ClinicalStudyResults.org. and shall prominently feature links to those websites on the Home Page of the Bayer Website.

14. Within two (2) weeks of the Date of this Consent, Bayer shall arrange and pay for the publication of the advertisement annexed hereto as Exhibit 3 to run in the next available print and electronic editions (for at least one month on the electronic editions) of each of the following journals: Journal of the American Medical Association, New England Journal of Medicine, Annals of Internal Medicine, Journal of the American Board of Family Practice, Pharmacotherapy, Annals of Pharmacotherapy, and the Journal of Clinical Pharmacology & Therapeutics. Bayer shall arrange and pay for each of the advertisements to be placed between the front cover and the first article in each journal. Letters to the editor do not constitute articles for the purpose of this paragraph. Each advertisement must be at least one half page in size.

15. Nothing in this Consent shall require Bayer to:

- a. take an action that is prohibited by the FDCA or any regulation promulgated thereunder, or by FDA; or
- b. fail to take an action that is required by the FDCA or any regulation promulgated thereunder, or by FDA. Any written or oral promotional claim subject to this Consent which is the same or substantially the same as the language prescribed by FDA shall not constitute a violation of this Consent.

16. Bayer shall:

- a. provide a copy of the Compliance Provisions of this Consent Decree to all

current employees having direct responsibility for Posting Clinical Study information; and will make this Consent Decree accessible on Bayer's intranet site to all current employees having responsibility for marketing and promoting its Products. ("Relevant Persons");

- b. obtain certifications from the Relevant Persons that they have received and/or reviewed a copy of the Compliance Provisions of this Consent, have read them, understand their responsibilities and duties in accordance therewith, and will abide by the Compliance Provisions; and
- c. submit to each Signatory Attorney General, on the anniversary of the Effective Date of this Consent, a written affirmation setting forth Bayer's compliance with this paragraph.

IV. DISBURSEMENT OF PAYMENTS: PAYMENT TO THE STATES

17. Within thirty (30) days of the Effective Date of this Consent, Bayer shall pay \$8,000,000.00 to the States by electronic fund transfer made payable to the Oregon Attorney General's Office which shall divide and distribute these funds as designated by and in the sole discretion of the Signatory Attorneys General as part of the consideration for the termination of their respective investigations under the State Consumer Protection Laws regarding the Subject Matter of this Consent. Said payment shall be used by the States as and for attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted

by state law, at the sole discretion of each Signatory Attorney General.³

V. GENERAL PROVISIONS

18. This Consent shall be governed by the laws of the above-named states.

19. This Consent is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Consent.

20. Nothing in this Consent constitutes any agreement by the Parties concerning the characterization of the amounts paid pursuant to this Consent for purposes of the Internal Revenue Code or any state tax laws.

21. This Consent does not constitute an approval by the Signatory Attorneys General of any of Bayer's business practices, including its promotional or marketing practices, and Bayer

³For ARKANSAS, the money shall be placed in the Arkansas Attorney General's Consumer Education and Enforcement Fund and held in trust for purposes directly related to Arkansas consumer protection efforts. For CALIFORNIA payment will go to the California Unfair Compensation Fund. DELAWARE's payment will go to the Consumer Protection Fund. In MASSACHUSETTS, the money shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L. c. 12, section 11G. In OREGON, the money shall be deposited to the Consumer Protection and Education Revolving Account established pursuant to ORS 180.095. In PENNSYLVANIA, funds distributed to the Pennsylvania Office of Attorney General may be used for costs of investigation, attorney fees and for future consumer protection and public protection purposes. TENNESSEE shall distribute its total of \$200,000, pursuant to Tenn. Code Ann. § 47-18-108 (a) (5) and (b) (4), as follows: \$150,000 in attorneys' fees and costs of the Office of the Tennessee Attorney General which may be used at the sole discretion of the Tennessee Attorney General for consumer protection purposes; \$25,000 shall be paid to the State of Tennessee's General Fund and the remaining \$25,000 shall be paid to the Tennessee Division of Consumer Affairs to purchase Tennessee Consumer Protection Act statute booklets for distribution to consumers and others and for publication and dissemination of other consumer education booklets. Any remaining balance from the Division of Consumer Affairs' \$25,000 shall be used for consumer education and investigative purposes at the sole discretion of the Director of the Tennessee Division of Consumer Affairs.

shall make no representation or claim to the contrary.

22. This Consent sets forth the entire agreement between the Parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Consent may be amended by written agreement between the Parties, subject to any further requirements under an individual Signatory Attorney General's state law.

23. This Consent may be executed in counterparts, and by different signatories on separate counterparts, each of which shall be deemed to constitute an original counterpart hereof, and all of which shall together constitute one and the same Consent. One or more counterparts of this Consent may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

24. This Consent shall become effective on the Effective Date and Bayer's obligations to Post information and otherwise publish its Clinical Study Reports shall remain in effect for Ten (10) years following the Effective Date.

VI. REPRESENTATIONS AND WARRANTIES

25. Bayer acknowledges that it is a proper party to this Consent. Bayer further warrants and represents that the individual signing this Consent on behalf of Bayer is doing so in his or her official capacity and is fully authorized by Bayer to enter into this Consent and to legally bind Bayer to all of the terms and conditions of the Consent.

26. Each of the Parties represents and warrants that it negotiated the terms of this Consent in good faith.

27. Each of the Signatory Attorneys General warrants and represents that he or she is

signing this Consent in his or her official capacity, and that he or she is fully authorized by his or her state to enter into this Consent, including but not limited to the authority to grant the release contained in Paragraphs 29-31 of this Consent, and to legally bind his or her state to all of the terms and conditions of this Consent.

28. Bayer acknowledges and agrees that the Signatory Attorneys General have relied on all of the representations and warranties set forth in this Consent and that, if any representation is proved false, deceptive, misleading, or inaccurate in any material respect, the Signatory Attorneys General have the right to seek any relief or remedy afforded by law or equity in their respective states.

VII. RELEASE

29. Based upon their investigation into Bayer's promotional and marketing practices regarding Baycol, the Signatory Attorneys General have concluded that this Consent is the appropriate resolution of any alleged violations of the State Consumer Protection Laws. The Signatory Attorneys General acknowledge by their execution hereof that this Consent terminates their investigation under the State Consumer Protection Laws into Bayer's promotional practices regarding Baycol® prior to the Effective Date of this Consent.

30. In consideration of the Compliance Provisions, payments, undertakings and acknowledgments provided for in this Consent, and conditioned upon Bayer's full payment of the amount specified in Paragraph 17 and subject to the reservations set forth in Paragraph 31 by its execution of this Consent, each Signatory Attorney General, as defined in Section I, Paragraph T, releases and forever discharges, to the fullest extent permitted by law, Bayer and all of its past and present officers, directors, shareholders, employees, affiliates, subsidiaries, predecessors,

assigns and successors (hereinafter referred to collectively as the "Released Parties"), from the following: all civil claims, causes of action, counterclaims, set-offs, demands, actions, suits, rights, liabilities, damages, restitution, fines, costs and penalties under the above-cited statutes arising from the Covered Conduct, also defined as the Subject Matter of this Consent in Section I, Paragraph V, as described in Section II, Paragraph 3 of the Consent, that were or could have been asserted against the Released Parties by the Signatory Attorneys General on or after February 18, 1998. This release does not apply to any conduct occurring after the Effective Date of this Consent.

31. Notwithstanding any term of this Consent, specifically reserved and excluded from the Released Claims as to any entity or person, including Released Parties, are any and all of the following:

- a. Any criminal liability that any person or entity, including Released Parties, has or may have to any or all of the Signatory Attorneys General;
- b. Any civil or administrative liability that any person or entity, including Released Parties, has or may have to any of or all of the Signatory Attorneys General, under any statute, regulation or rule not expressly covered by the release in Paragraph 30 above, including, but not limited to, any and all of the following claims:
 - (i) State or federal antitrust violations;
 - (ii) Reporting practices, including "best price", "average wholesale price" or "wholesale acquisition cost";
 - (iii) Medicaid violations, including federal Medicaid drug rebate statute

violations, Medicaid fraud or abuse, and/or kickback violations related to any State's Medicaid program;

(iv) State false claims violations; and,

(v) Claims to enforce the terms and conditions of this Consent.

c. Any liability under the above-cited consumer protection laws of any or all of the Signatory Attorneys General which any person or entity, including Released Parties, has or may have to individual consumers or State program payors of said Individual States, and which have not been specifically enumerated as included herein.

VIII. NO ADMISSION OF LIABILITY

32. This Consent does not constitute an admission by Bayer for any purpose, of any fact or of a violation of any state law, rule, or regulation, nor does this Consent constitute evidence of any liability, fault, or wrongdoing. Bayer enters into this Consent for the purpose of resolving the concerns of the Signatory Attorneys General regarding Bayer's promotional and marketing practices for Baycol®. Bayer does not admit any violation of the State Consumer Protection Laws, and does not admit any wrongdoing that could have been alleged by the Signatory Attorneys General.

33. This Consent shall not be construed or used as a waiver or any limitation of any defense otherwise available to Bayer. This Consent is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Nothing in this Consent, including this paragraph, shall be construed to limit or to restrict Bayer's right to use this Consent to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement,

accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

IX. DISPUTES REGARDING COMPLIANCE

34. For the purposes of resolving disputes with respect to compliance with this Consent, should any of the Signatory Attorneys General have cause to believe that Bayer has violated a provision of this Consent subsequent to the Effective Date of this Consent, then such Attorney General shall notify Bayer in writing of the specific objection, identify with particularity the provisions of this Consent and/or the State Consumer Protection Law that the practice appears to violate, and give Bayer thirty (30) business days to respond to the notification; provided, however, that a Signatory Attorney General may take any action where the Signatory Attorney General concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

35. Upon giving Bayer thirty (30) business days to respond to the notification described in Paragraph 34 above, the Signatory Attorney General shall be permitted to serve a document request for relevant, non-privileged, non-work-product records and documents in the possession, custody or control of Bayer that relate to Bayer's compliance with each provision of this Consent as to which legally sufficient cause has been shown. In response to that document request, Bayer will make responsive documents available to the Signatory Attorneys General.

X. PENALTIES FOR FAILURE TO COMPLY

36. The State may assert any claim that Bayer has violated this Consent in a separate civil action to enforce this Consent, or to seek any other relief afforded by law. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall

be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. Bayer does not waive any objection it may have to the admissibility of any such evidence, as permitted by law. Pursuant to Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Order shall be punishable by a civil penalty of not more than two thousand dollars (\$2,000), recoverable by the state for each violation in addition to any other appropriate relief.

XI. COMPLIANCE WITH ALL LAWS

37. Except as expressly provided in this Consent, nothing in this Consent shall be construed as:

- a. relieving Bayer of its obligation to comply with all applicable state laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule; or
- b. limiting or expanding in any way any right the State may otherwise have to obtain information, documents or testimony from Bayer pursuant to any applicable state law, regulation or rule, or any right Bayer may otherwise have to oppose any subpoena, civil investigative demand, motion, or other procedure issued, served, filed, or otherwise employed by the State pursuant to any such state law, regulation, or rule.

XII. NOTICES UNDER THIS CONSENT

38. Any notices that must be sent to the State or to Bayer under this Consent shall be sent by overnight United States mail. The documents shall be sent to the following addresses:

For the MSWG:

Suzanne D. Sonneborn
Assistant Attorney General, Consumer Protection Division
G Mennen Williams Building, 6th Floor
525 West Ottawa Street
Post Office Box 30213
Lansing, Michigan 48909
Telephone: 517.335.0855
Facsimile: 517. 335.1935

David Anthony Hart
Assistant Attorney General
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: 503. 947-4333
Facsimile: 503. 378-5017

For Bayer Corporation:
Chief Legal Officer
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205
Telephone: 412.777.5774
Facsimile: 412.777.4417

Kristin Graham Koehler, Partner
Attorney ID Number
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: 202.736.8359

XIII. TENNESSEE SPECIFIC TERMS

39. IT IS SO ORDERED that jurisdiction is retained by this Court for the purpose of enabling any party to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Consent.

40. IT IS SO ORDERED that Tennessee shall receive a total of Two Hundred

Thousand Dollars (\$200,000.00) from the payment made to the states under paragraph 17.

Pursuant to Tenn. Code Ann. § 47-18-108(a) (5) and (b) (4), One Hundred and Fifty Thousand Dollars (\$150,000.00) shall be attorneys' fees and costs of the Office of the Tennessee Attorney General which may be used at the sole discretion of the Tennessee Attorney General for consumer protection purposes. Twenty-five Thousand Dollars (\$25,000.00) shall be paid to the State of Tennessee's General Fund. The remaining Twenty-five Thousand Dollars (\$25,000.00) shall be paid to the Tennessee Division of Consumer Affairs to purchase Tennessee Consumer Protection Act statute booklets for distribution to consumers and others and for publication and dissemination of other consumer education booklets. Any remaining balance from the Twenty-five Thousand (\$25,000) paid to the Division of Consumer Affairs shall be used for consumer education and investigative purposes at the sole discretion of the Director of the Tennessee Division of Consumer Affairs.

41. IT IS SO ORDERED that:

- a. Pursuant to Tenn. Code Ann. § 47-18-108(a) (3), venue as to all matters between the parties relating hereto or arising out of this Consent is solely in the Circuit Court of Davidson County, Tennessee.
- b. This Consent shall in no way affect individual rights of action.
- c. Defendant hereby waives any and all rights which it may have to be heard in connection with judicial proceedings regarding entry of said Consent.
- d. This Consent shall only be enforceable by the parties to this action.
- e. Further, assent to this Consent by Defendant can be completed through electronic or facsimile signatures on separate sheets of paper. Original

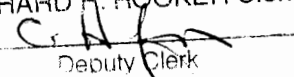
signature pages for the Defendant will be submitted to the Court as soon as possible by a notice of filing.

- f. All costs associated with filing and distribution of the State's Complaint and this Consent, and any other incidental cost or expenses incurred thereby shall be borne by Defendant. No court costs shall be taxed against the State as mandated by Tenn Code Ann. § 47-18-116.

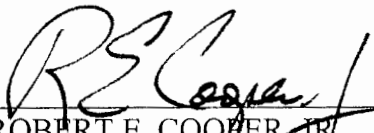
IT IS SO ORDERED.

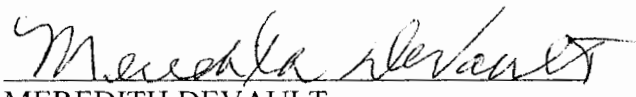
DATED this ____ day of _____, 2007.

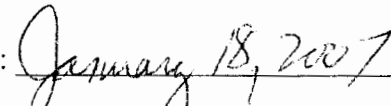

CIRCUIT COURT JUDGE

I hereby certify that this is a true copy
of original instrument filed in my office
this 23 day of Jan 20 07
RICHARD R. ROOKER Clerk
By 
Deputy Clerk

FOR THE STATE OF TENNESSEE ATTORNEY GENERAL:


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B.P.R. No. 010934


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Facsimile: (615) 532-2910

Date: 

Approved and Recommended by:


MARY CLEMENT

Director

Tennessee Division of Consumer Affairs

Date: 1-9-07

103215

FOR BAYER CORPORATION:

By: George J. Lykos

George Lykos
Chief Legal Officer
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Date: January 17, 2007

Approved as to form:

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Kristin Graham Koehler, Partner

Sidley Austin LLP

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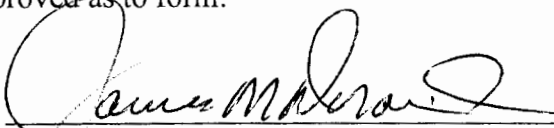
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Date: January 17, 2007

Approved as to form:

By:


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Nashville City Center

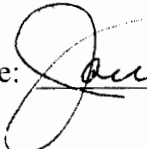
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Date:

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